DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: BS174718 **Hearing Date:** November 05, 2019 **Dept:** 85

Adrian Riskin v. Historic Core Business Improvement District, BS174718

Tentative decision on petition for writ of mandate: granted in part

Petitioner Adrian Riskin ("Riskin") seeks a writ of mandate directing Respondent Historic Core Business Improvement District Property Owners Association ("HCBID") to conduct a new search for and produce public records responsive to his five requests under the California Public Records Act ("CPRA").
The court has read and considered the moving papers,[1] opposition, and reply, and renders the following tentative decision.

A. Statement of the Case
1. Petition
On August 13, 2018, Riskin filed the Petition for writ of mandate, which alleges in pertinent part as follows.[2]
Riskin is a resident of Los Angeles who publishes a blog where he regularly reports on information obtained through CPRA requests. Pet. §The Parties, ¶1.
HCBID is a property owners' association created by the City of Los Angeles pursuant to the Property and Business Improvement District Law of 1994, Streets & Highways Code §§36600 *et seq*., that manages the Historic Core's Business Improvement District ("BID"). Id. at ¶ 2. HCBID is subject to the CPRA. Ibid.
Riskin made five CPRA requests on many different dates to discover how HCBID's staff and board of directors influence local officials and legislation, especially involving HCBID's renewal process for its BID. Id. §Overview, ¶¶ 2-3.
Generally, Riskin alleges that HCBID engaged in a pattern of non-compliance, delay, obstruction, and broken promises of compliance amounting to a wrongful refusal to produce requested records under the CPRA.
Riskin seeks (1) a writ of mandate directing HCBID to immediately conduct a diligent and comprehensive search for the requested records and promptly produce those records, (2) a declaration that HCBID has violated CPRA, (3) an order for HCBID to produce all responsive records to any future requests within 30 days unless HCBID shows an extraordinary hardship, and (4) reasonable attorney fees and costs. Id. §Request for Relief.

B. Standard of Review
A party may seek to set aside an agency decision by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for traditional mandamus is appropriate in all actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." Ibid.
A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-584. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to

performance. Id. at 584. Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701. Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-371. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

No administrative record is required for traditional mandamus to compel performance of a ministerial duty or as an abuse of discretion.

C. Governing Law

1. CPRA

The CPRA was enacted in 1968 to safeguard the accountability of government to the public. San Gabriel Tribune v. Superior Court, (1983) 143 Cal.App.3d 762, 771-72. Government Code[3] section 6250 declares that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA's purpose is to increase freedom of information by giving the public access to information in the possession of public agencies. CBS. Inc. v. Block, (1986) 42 Cal.3d 646, 651. The CPRA was intended to safeguard the accountability of government to the public, and it makes public access to governmental records a fundamental right of citizenship. Wilson v. Superior Court, (1996) 51 Cal.App.4th 1136, 1141. This requires maximum disclosure of the conduct of government operations. California State University Fresno Assn., Inc. v. Superior Court ("California State University"), (2001) 90 Cal.App.4th 810, 823.

The CPRA makes clear that "every person" has a right to inspect any public record. §6253(a). The term "public record" is broadly defined to include "any writing containing information relating to the conduct of the people's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics. §6252(e). The inspection may be for any purpose; the requester's motivation is irrelevant. §6257.5.

The right to inspect is subject to certain exemptions, which are narrowly construed. California State University, *supra*, 90 Cal.App.4th at 831. The exemptions are found in sections 6254 and 6255 and include personnel information, deliberative process, private information and others.

Upon receiving a request for a copy of public records, an agency has to determine within 10 days whether the request seeks public records in the possession of the agency that are subject to disclosure, though that deadline may be extended up to 14 days for "unusual circumstances." §6253(c). If the agency determines that the requested records are not subject to disclosure, the agency promptly must notify the person making the request and provide the reasons for its determination. Ibid.

If the agency determines that the requested records are subject to disclosure, it must state in the determination "the estimated date and time when the records will be made available." Ibid. There is no deadline expressed in a number of days for actually producing the records. Rather, section 6253(b) says the agency "shall make the records promptly available." Further, section 6253(d) provides that nothing in the CPRA "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records."

"Records requests . . . inevitably impose some burden on government agencies. An agency is obliged to

comply so long as the record can be located with reasonable effort." California First Amendment Coalition v. Superior Court, ("California First Amendment") (1998) 67 Cal.App.4th 159, 165-66. "Reasonable efforts do not require that agencies undertake extraordinarily extensive or intrusive searches, however. [Citation.] In general, the scope of an agency's search for public records 'need only be reasonably calculated to locate responsive documents.'" City of San Jose v. Superior Court, (2017) 2 Cal.5th 608, 627. The "CPRA does not prescribe specific methods of searching for those documents. Agencies may develop their own internal policies for conducting searches. Some general principles have emerged, however. Once an agency receives a CPRA request, it must 'communicate the scope of the information requested to the custodians of its records,' although it need not use the precise language of the request. [Citation.]." Ibid.
A CPRA claim to compliance with a public records request may proceed through mandamus or declaratory relief. §§6258, 6259. A petition for traditional mandamus is appropriate in actions "to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station." CCP §1085. Because the petitioner may proceed through either mandamus or declaratory relief, the trial court independently decides whether disclosure is required. *See* City of San Jose v. Superior Court, (1999) 74 Cal.App.4th 1008, 1018 (appellate court independently reviews trial court CPRA decision). No administrative record is required, and the parties must submit admissible evidence.

2. BIDs

A "Business Improvement District" ("BID") is a defined area within a city created by petition of property owners under the Property and Business Improvement District Law of 1994 to self-fund and provide supplemental municipal services. Streets & Highways ("St. & Hwys.") Code §36600 *et seq*. A city forming a BID must contract with a private non-profit entity identified as an "owners' association" to administer or implement improvements, maintenance, and activities specified in a management district plan. Sts. & Hy. Code §36612. Owners' associations levy assessments upon businesses or real property within the BIDs to fund these improvements. Sts. & Hy. Code §36601(c). Although not considered a public entity, owners' association must comply with the CPRA and the Brown Act. Sts. & Hy. Code §36612.
The management district plans governing BIDs must state a specific number of years in which assessments will be levied. Sts. & Hy. Code §36622(h). The maximum number of years which the plan can specify is ten years. Ibid. Upon the plan's expiration, a new plan may be created and the district renewed. Sts. & Hy. Code §36630.
A BID may be disestablished by resolution of the city council if the city finds that there has been misappropriation of funds, malfeasance, or a violation of law in connection with the management of the district. Sts. & Hy. Code §36670(a)(1). A BID may also be disestablished upon written petition of the owners of real property in the district who pay 50% or more of the assessments levied if the petition is submitted in a certain 30-day period each year. Sts. & Hy. Code §36670(a)(2).

D. Statement of Facts

1. Petitioner's Evidence[4]

In 2017, Riskin submitted five requests for public documents to HCBID. One was dated January 24, 2017, two were dated February 22, 2017, one was dated June 26, 2017, and the last was dated October 26, 2017. Riskin Decl. ¶6.
Riskin's January 24, 2017 CPRA request was to HCBID's Executive Director Blair Besten ("Besten") and sought "[a]ll emails between [Besten] and anyone at lacity.org or any of its subdomains from between January 1, 2016 and today [i.e., January 24, 2017]." Pet. Ex. A. The request sought the responsive records in native electronic format. Ibid. HCBID untimely responded that the request was overbroad and vague, but it was attempting to produce the records. Id. Ex. B.
On February 22, 2017, Riskin made two CPRA requests. The first CPRA request sought "[a]ll emails between anyone at the HCBID, staff or board, and anyone at the City of Los Angeles from between January 25, 2017 and February 22, 2017." Petition Ex. E. This request sought the responsive records in native electronic format. Ibid. The second CPRA request sought "[a]ll emails between anyone at the HCBID, staff or board, and anyone at StreetPlus from January 1, 2016 and January 31, 2017." Petition Ex.

F. This request also sought the responsive records in native electronic format. Ibid.

On June 26, 2017, Riskin made a multi-part CPRA request seeking: (1) HCBID emails to/from a list of 27 email addresses and domains from January 1, 2016 through the date of compliance with the request; (2) HCBID emails to/from the City of Los Angeles ("City") from February 23, 2017 through the date of the compliance with the request; (3) emails with the word "delijani" in them from January 1, 2016 through the date of the compliance with the request; and (4) the BID's contract with the renewal consultant and any communication between BID and the renewal consultant. Pet. Ex. K. This request seeks the responsive records in native electronic format. Ibid.

On October 26, 2017, Riskin made a multi-part CPRA request seeking: records in HCBID's possession involving the Historic Downtown Farmers' Market including (a) contracts, (b) emails between BID and anyone at Southland Farmers' Market Association from January 1, 2015 through the date of the search, and (c) emails between HCBID and the manager of the Historic Downtown Farmers' Market or emails that mention the manager. Pet. Ex. MM. This request seeks the responsive records in native electronic format. Ibid.

BIDs such as the HCBID use publicly-disbursed money to collaborate and wield political influence with the City. Riskin Decl. ¶7. Through his five CPRA requests, Riskin sought to understand and report on the ways in which HCBID's staff and board of directors influence City officials. Ibid. He also sought to understand and report on the means by which Besten, Respondent's Executive Director, collaborates with the staff of other Downtown BIDs to present a unified set of concerns to City staff. Ibid. HCBID lobbies City officials on planning and development projects. Ibid.

At the time he requested communications between HCBID and its consultant in June 2017, BCBID was undergoing its renewal process, pursuant to the Property and Business Improvement District Law of 1994, which involved advocating for the passage of two key ordinances. Riskin Decl. ¶8. Riskin was seeking to understand how HCBID and its consultant lobby and influence the City with respect to this municipal legislation. Riskin Decl. ¶9.

HCBID never responded to any of Riskin's requests within 10 days. Riskin Decl. ¶10. In response to his January 24, 2017 request, Besten provided a thumb drive with 1,743 email files in EML format with no redactions. Riskin Decl. ¶11. She also printed out about 250 pages of other emails in which she had redacted email addresses and phone numbers. Ibid.

Riskin inspected these pages at Besten's office in May 2017. Riskin Decl. ¶12. It seemed that she was trying to make his access to the records difficult by requiring him to review the records in a dimly lit room with no chair or table, printing copies in 4-point font, and only permitting two hours per appointment. Ibid. Nevertheless, he took photos of about 41 pages, comprising 23 distinct emails. Ibid. All the email address and phone numbers Besten had redacted were business contact information, not private contact information. Ibid. These redacted email addresses and phone numbers were unredacted on the files on the thumb drive. Ibid.

In response to the February 22, 2017 requests, in June 2017 Besten informed Riskin that the responses were complete. Riskin Decl. ¶13. Riskin made two different appointments to inspect the records -- in July and August 2017 -- but Besten cancelled both of them. Ibid. She said she would mail him the records, but she never did. Ibid.

In response to the June 26, 2017 request, Besten informed Riskin that the records were ready and he could inspect them on August 2, 2017, at the same time as the records responsive to the February 22, 2017 requests. Riskin Decl. ¶14. Besten cancelled the appointment. Ibid. She said she would mail Riskin the records, but never did. Ibid.

On October 10, 2017, Jeffrey Briggs, Esq. ("Briggs") emailed Riskin to inform him that he was now handling the CPRA responses for HCBID. Riskin Decl. ¶15. When Briggs started responding to the requests, the documents HCBID produced were often non-responsive or commingled with non-responsive or duplicative records. Riskin Decl. ¶16. Sometimes HCBID produced six copies of a single record. Ibid. This duplication makes it difficult to determine what, if anything, is responsive. Ibid. It also made Riskin believe that HCBID had not performed an adequate search. Ibid.

On August 8, 2018, Riskin filed the instant Petition. Riskin Decl. ¶17. On December 21, 2018, Riskin, his

attorney Colleen Flynn, Esq. ("Flynn"), Briggs, and Besten met at Briggs' office. Riskin Decl. ¶18. At the meeting, Besten and Briggs agreed to give Riskin unredacted electronic copies of the 250 pages of emails produced in response to his January 24, 2017 request. Riskin Decl. ¶18.
On December 31, 2018, Briggs sent Riskin 1,418 files. Riskin Decl. ¶19. About half (47.9%) were duplicates. Ibid. Some were duplicated as many as six times. Ibid. There were 738 distinct files, and many were not responsive to the January 24, 2017 request. Ibid. Of the 23 emails Riskin had photographed in May 2017, *none* had been included in the production. Ibid. Some were responsive to other requests and had not been produced earlier, including emails between Besten and Abraham Lopez, an employee of StreetPlus. Ibid. Such emails were responsive to the February 2017 request for StreetPlus emails and yet had never been produced. Ibid.

2. Respondent's Evidence

a. The Parties

HCBID is located in the traditional "historic core" of downtown Los Angeles. Besten Decl. ¶2. HCBID contracts with the City to provide services in the district beyond those provided by the City (such as extra street cleaning and more frequent trash removal) funded by a special tax assessment levied on the HCBID members of their own volition. Besten Decl. ¶2. HCBID property owner assessments go through the City, but they are not "public funds" and HCBID uses no public tax dollars to operate. Ibid. HCBID occasionally employs a second staff person as an assistant, but Besten sometimes is the sole HCBID employee. Besten Decl. ¶3.
HCBID's funds are committed to additional public area cleaning and safety/security patrol officers. Besten Decl. ¶4. HCBID has few available discretionary funds in its budget, so costs associated with responding to CPRA requests, including legal counsel, reduce the funds available for its budgeted services to the district. Ibid.
Riskin is a serial CPRA requester. Briggs Decl. ¶4. The requests at issue are but a miniscule fraction of the hundreds of requests he has made since at least October 2014 to virtually every BID and every City agency having anything to do with BIDs. Ibid. The City has been so inundated with Riskin's requests that the City Attorney established strict rules for compliance to ensure that services are not disrupted by staff time devoted to handling Riskin's extraordinarily voluminous and unceasing requests. Ibid; Ex. 21.
Riskin's blog acknowledges that he uses CPRA requests as a means of making BIDs his "victims" by draining their resources, discouraging volunteer and vendor BID participation, potentially causing them to breach their City contracts, and leading ultimately to their disestablishment. Briggs Decl. ¶5; Ex. 22.
Riskin has filed a number of CPRA lawsuits seeking attorney fees from BIDs. Briggs Decl. ¶6.
Riskin's blog, michaelkohlhaas.com, refers to BID participants and even their family members as "Nazis," "white supremacists," and similar hate language. Besten Decl. ¶11; Briggs Decl. ¶3. Riskin's post entitled "How to Destroy a Business Improvement District in California: A Theory," included an image of a nuclear explosion captioned as a way to get rid of BIDs in Los Angeles. Ibid. His blog makes use of female-directed slurs, which Besten considers hate speech and was scared by it. Ibid. Besten also learned that Riskin was selling a coffee mug with her photo on it on his website. Ibid. He further has used her photo as his identifier on Twitter while making anti-BID statements. Ibid.

b. The Responses

In response to Riskin's January 24, 2017 request for 13 months of emails between HCBID and any City email address in their native electronic format, Besten provided Riskin more than 1000 emails in electronic format and another 500 pages of email print-outs with some email addresses and names redacted. Besten Decl. ¶5. There are many different BIDs in Los Angeles and Besten was informed by BIDs dealing with Riskin that high volume document delivery systems like Dropbox and native format records could be used to hack into the provider's email system and that she should attempt to protect the privacy of third parties. Ibid.
As a result of hacking and privacy concerns, Besten determined to redact some email address information and names from responsive records revealed in her search. Besten Decl. ¶6. The redaction effort was time-

consuming and tedious. Ibid. Besten intended to delete the redacted emails to avoid producing them when she produced non-redacted emails, but she is sure that she missed deleting some of them. Ibid.
Besten eventually received advice that the redaction of email addresses was not necessary, and she stopped that practice. Besten Decl. ¶7. She kept all of the hard copy and redacted records in a separate box and gave it to Riskin to review. Ibid. Riskin made copies of a few of the redacted records and Besten received no further inquiry about the redacted records until this lawsuit. Ibid. Besten later gave that same box of original redacted emails to HCBID's counsel, Briggs. Ibid.
When Riskin visited HCBID's offices to review records, he was given space in a room HCBID frequently uses for meetings near its security personnel. Besten Decl. ¶8. It has bleacher-style seating with plenty of seating and note-taking space. Ibid. Riskin demanded different accommodations for future visits, including a specification for light bulb wattage. Ibid.
Besten did all email searches in response to Riskin's CPRA requests by using keywords. Besten Decl. ¶9. If a request specified a particular email address or person's name, she searched those as keywords as well. Ibid. Some keyword searches yielded different results, and there was some duplication, but Besten did not attempt to eliminate duplicates except when it was obvious. Ibid.
Besten began working on responses to Riskin's two February 2017 requests after concluding that redacting third-part email addresses was not necessary. Besten Decl. ¶14. She then received Riskin's June 2017 requests containing four different requests, one with 27 subparts. Concerned about Riskin's conduct, she cancelled his appointments for onsite inspection and offered to mail the responsive records instead. Ibid. Riskin insisted on coming to the office, which made Besten even more concerned about meeting him. Ibid.
HCBID engaged Briggs as legal counsel in August of 2017 to help deal with the three then-pending responses. Besten Decl. ¶15; Briggs Decl. ¶7. Briggs was engaged to review the records revealed by Besten's searches, evaluate potential exemptions, provide the records to Riskin, and otherwise interact with him. Ibid.
Briggs possesses the box of 500 original redacted records that Besten made available to Riskin at the HCBID offices in early 2017. Briggs Decl. ¶8. After this action was filed, Briggs again made this box available to Riskin and his counsel. Ibid. Riskin then requested, for the first time, an electronic unredacted copy of the redacted records and HCBID agreed to provide what it still had in that form. Ibid. Briggs searched the records Besten had provided in response to the January 24, 2017 request, and they were produced to Riskin again in electronic native form without redactions. Ibid. Briggs performed multiple keyword searches to ensure completeness. Briggs Decl. ¶9. No attempt was made to provide *only* the emails previously provided in redacted form because there was no harm in re-producing records that had been previously provided electronically. Ibid.
HCBID uses Google Mail for email. Besten Decl. ¶16; Briggs Decl. ¶10. Google Mail does not allow Besten to do a "drag and drop" transfer of native format emails in the way that Outlook and other email systems do. Ibid. To transfer native format emails to Briggs for review and re-transfer to Riskin, Besten had to use another email system, "Thunderbird", to convert HCBID's Google Mail emails to a format that would preserve their native format data in the original email. Besten Decl. ¶16. HCBID acquired help from an outside vendor for this task. Ibid. Even with that help, Thunderbird caused computer problems and the loss of some data, possibly including some emails. Ibid. Besten had to uninstall and reload Thunderbird at least two different times to get it to function, and then had to do the many keyword searches called for by Riskin's pending requests again to be sure of completeness. ibid. After the results were transferred to Thunderbird, Besten tested to ensure that all responsive records identified in her many keyword searches were successfully and completely converted. Ibid.
Besten then attempted to transfer the Thunderbird emails to Briggs for his review. Besten Decl. ¶17; Briggs Decl. ¶11. This took several attempts over a period of weeks and using different methods. Ibid. When Briggs confirmed that he had received and could access all the emails, Besten deleted them from her computer system. Besten Decl. ¶17.
Eventually Briggs was able to access the emails and review them. Briggs Decl. ¶12. Based on prior experience, he tried to produce records to Riskin in trenches identified consistently with Riskin's naming protocol for each of his requests and their subparts. Ibid. Certainly, duplicates and non-responsive records

were produced. Duplicates were removed when obvious from the lists compiled in response to the 30-odd searches performed to do so, but some certainly were missed and thus were provided to Riskin more than once. Ibid. In addition, some duplicates existed within the email repository supplied by Besten. Ibid. Finally, because many emails were responsive to many different subparts, and a number of duplicates undoubtedly were supplied to Riskin in the myriad subpart-identified trenches. Ibid. Briggs also was careful to be over-inclusive as he sent the emails so that he did not miss anything; this also likely resulted in some duplication. Ibid. A keyword search also frequently identifies emails that are not responsive to a request for emails to and from an email address containing that keyword. Briggs Decl. ¶13. Consequently, keyword searches can lead to production of non-responsive records. Ibid.

Briggs reviewed each of the many emails he received from Besten for potential exemptions and ultimately found no significant exemptions. Briggs Decl. ¶15. He then encountered problems in transferring the records electronically to Riskin, which took multiple efforts and also likely led to some duplication to ensure completeness. Ibid.

HCBID and Briggs followed the same procedures in handling Riskin's request of October 2017, which arrived while they were working on the previous requests. Briggs Decl. ¶14.

By the end of May 2018, Briggs had produced all records responsive to the pending requests without asserting any exemptions. Briggs Decl. ¶15.

c. Mailchimp[5] and Streetplus

At her deposition, Besten was asked for the first time whether she had searched for emails sent by HCBID's third-party announcement and newsletter vendor, mailchimp. Besten Decl. ¶18. She had not. Ibid. Mailchimp does not send emails from HCBID. Ibid. Mailchimp is a service which HCBID uses to send high volume announcements to an email address list. Ibid. HCBID provides mailchimp with a recipient email address list and then a newsletter, which mailchimp then sends automatically to the HCBID list. Ibid. Mailchimp uses a different HCBID domain name address than that used by HCBID for its normal email communications, so while the recipient sees HCBID as the "sender," mailchimp is the actual sender. Ibid. HCBID receives no copy of the email sent by mailchimp and has no way to access to any such individual emails. Ibid All HCBID has is the email address list and a copy of the newsletters given to Mailchimp to send out. Ibid.

One of Riskin's CPRA requests was for emails between HCBID and Streetplus. Besten Decl. ¶19. Streetplus is a third-party vendor HCBID hires for safety and security patrol. Ibid. Besten used the keyword "Streetplus" when she searched for emails in response to this request. Ibid. She sent the resulting emails to Briggs for review and production to Riskin. Ibid. After Riskin filed this action, Besten was reminded that Streetplus once had its own HCBID email address which was discontinued sometime in 2016. Ibid. Besten performed a further search for emails using the name of the Streetplus employee who had the discontinued HCBID email address, and she found some responsive emails. Ibid. She provided them to Briggs for review and production to Riskin. Besten Decl. ¶19; Briggs Decl. ¶19.

d. Agreement on Response Time

After this action was filed, Riskin and HBID reached an agreement for the timing HCBID would attempt to follow in response to future Riskin CPRA requests. Briggs Decl. ¶20. This agreement mirrors another agreement entered into by Riskin and a BID represented by Briggs without the need for litigation. Ibid. Riskin never made such a proposal to HCBID prior to commencing this action, and this action was not required for HCBID to enter into such an agreement. Ibid.

3. Reply Evidence

The Executive Director of the Los Angeles Chapter of the National Lawyers Guild ("NLG-LA"), a progressive bar organization, uses mailchimp to send e-mails containing newsletters, requests for legal observers, and other organizational updates to its members. Rogers Reply Decl. ¶2. NLG-LA often prepares "e-blasts" sent to members through mailchimp. Ibid. After sending out a newsletter or other email through a mailchimp "e-blast", it is easy to check the recipients of the email and also to access copies

of the emails sent. Ibid.
To review the recipient list of an email sent through Mailchimp, the follow steps may be taken: (1) sign into mailchimp, (2) go to "Campaigns" (e-blasts) and select one that has already been sent, (3) find the number at the top, left of the screen which shows the number of recipients, (4) click on that number for the full list of recipient names and email addresses. Rogers Reply Decl. ¶4.
To retrieve a copy of an email that has already been sent through mailchimp, the following steps may be taken: (1) sign into mailchimp, (2) go to "Campaigns" (e-blasts) and select one that has already been sent, (3) click the three vertical dots in the upper right corner (using Chrome browser), (4) select "print" and choose the printer and the email will be printed. Rogers Reply Decl. ¶5.
It is simple to conduct a single search using multiple keywords in Gmail. Riskin Reply Decl. ¶2. It is not necessary to run multiple searches. Ibid. When searching Gmail, domain names and email addresses are the same as any other keywords. Ibid. Gmail automatically searches for subdomains when domains are entered in the search box. Ibid.
One can directly extract emails from Gmail in MBOX or EML, which are native format files. Riskin Reply Decl. ¶4. The extraction formats directly. Ibid. After a search is complete, the entire set of responsive emails can be extracted from Gmail with no special software. Ibid.
Briggs and Besten did not tell Riskin and Flynn at the December 2018 meet-and-confer that Besten had attempted to delete any emails responsive to the 2017 CPRA requests. Riskin Reply Decl. ¶3.

E. Analysis

Petitioner Riskin seeks to compel HCBID to release the records responsive to his five CPRA requests in their native electronic format and to conduct new, adequate searches with court-ordered supervision.

1. Riskin

HCBID contends that Riskin is a serial CPRA requester who has "weaponized" the CPRA, a fact which is necessary to explain the context in which Besten responded to his requests. Briggs Decl. ¶4; Opp. at 7. HCBID presents evidence that Riskin's requests in this case are but a miniscule fraction of the hundreds of requests he has made since October 2014 to virtually every BID and every City agency having anything to do with BIDs. Ibid. The City has been so inundated with Riskin's requests that the City Attorney established strict rules for compliance with Riskin's requests to ensure that services are not disrupted by staff time devoted to handling his voluminous and unceasing requests. Ibid; Ex. 21.
Riskin's blog, michaelkohlhaas.com, refers to BID participants and even their family members as "Nazis," "white supremacists," and similar hate language. Besten Decl. ¶11; Briggs Decl. ¶3. Riskin's post entitled "How to Destroy a Business Improvement District in California: A Theory," included an image of a nuclear explosion captioned as a way to get rid of BIDs in Los Angeles. Ibid. His blog makes particular use of female-directed slurs, which Besten considers hate speech and scared her. Ibid. She also learned that Riskin was selling a coffee mug with her photo on it on his website. Ibid. He has used her photo as his identifier on Twitter while making anti-BID statements. Ibid.
Riskin's blog acknowledges that he uses CPRA requests as a means of making BIDs his "victims" by draining their resources, discouraging volunteer and vendor BID participation, potentially causing them to breach their city contracts, and leading ultimately to their disestablishment. Briggs Decl. ¶5; Ex. 22.
Riskin has filed a number of lawsuits under the CPRA seeking attorney's fees from BIDs. Briggs Decl. ¶6.

Riskin replies that HCBID unfairly makes *ad hominem* attacks for his exercise of First Amendment protected rhetorical speech. *See* NAACP v. Claiborne Hardware, (1982) 458 U.S. 886, 928. HCBID is unable to provide an example of a threat by him. *See* Besten Depo., p. 91-92. Riskin inspected records at Besten's office in May 2017 without incident. Riskin Dec. ¶ 12. Nor does HCBID provide a single example of a misogynistic statement by him. Riskin has called Besten such unthreatening names as "batty" or "fusspot". Riskin notes that, according to the Oxford English Dictionary, both "batty" and "fusspot" are gender-neutral terms that can be applied to both men and women. Reply at 5-6.

The court agrees that HCBID's evidence shows him to be a gadfly, not a threat. As the court found in in another Riskin case, "The court cannot conclude that Riskin's motive of needling HPOA employees in

his blog is by itself unlawful or even inequitable. The key fact is that Riskin has not taken any action to personally confront or harass HPOA employees; he has only posted disparaging information in a blog. The internet is full of unsupported and unwarranted contentions, and Riskin's blog falls in the realm of a probably harmless, and possibly useless, screed. The situation would be different if Riskin made harassing emails or personal confrontations." Riskin v. Hollywood Property Owners Alliance, Case No. BS166500 (Feb. 20, 2018 decision).

Moreover, Riskin's motives for his requests are irrelevant. The CPRA "does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure." §6257.5. While an agency may withhold records for which a statutory exemption applies, the requestor's purpose in seeking the records is irrelevant. *See* County of Los Angeles v. Superior Court (Axelrad), (2000) 82 Cal.App.4th 819, 826.

On the other hand, Riskin's argument that he does not make too many CPRA requests is untenable. While he notes that HBCID "acknowledges that [he] does not have a single CPRA request pending with Respondent besides the 2017 requests at issue in this litigation" (Briggs Decl. ¶ 16), and that the City rescinded its policy for his requests in January 2019 (Riskin Reply Decl. Ex. 11), these facts do not alter HCBID's evidence that Riskin is a serial CPRA requester. He may not be a threat, but HCBID was entitled to rely in Riskin's request history to treat him differently than other requesters, just as the City did.

2. January 24, 2017 CPRA Request

The parties' briefs have narrowed the issues concerning the first January 24, 2017 CPRA request. Riskin argues that the mailchimp issue (*see post*) and the production of emails in native format are the only remaining issues for this request. Reply at 2.

With respect to native format,[6] Riskin notes that HCBID agreed at the December 2018 court-ordered meet and confer to produce the electronic versions of the requested emails. Yet, HCBID has not actually conducted a complete search for these emails. Instead, HCBID did a "Briggs search" in which Briggs only queried the files on his computer and not HCBID's actual email accounts. Briggs Dec. ¶8. The result was the production of many duplicative and non-responsive documents, but not all the actual emails HCBID agreed to produce. Reply at 2.

Now, eight months later, HCBID claims that it is unable to conduct another search of its actual email accounts because Besten deleted some responsive emails after she sent copies of these files to Briggs. *See* Besten Decl. ¶¶ 6, 17. This fact was not mentioned at the December 2018 meet-and-confer. Riskin Supp. Dec. ¶ 3. In Besten's February 21, 2019 deposition, Besten answered "No" when asked if she believed it was lawful to delete responsive emails. Besten Depo., pp. 64-65. Besten also answered "No" when asked specifically "if you thought that an email was responsive to a PRA request that you received, would you delete that email?" Besten Depo., p. 67.

Riskin contends that Besten's excuse is not convincing in light of her deposition testimony. In any event, she did not delete all responsive emails: "[A] search of the existing electronic responsive records established that she had not done so in all instances." Briggs Decl. ¶¶ 8-9. Opp. at 9. In light of the issues HCBID had transferring files from Besten to Briggs, it is unclear whether Briggs received all of them. Riskin argues that HCBID should be ordered to search Besten's Gmail account for electronic files responsive to the January 24, 2017 CPRA request. Reply at 2.

There is no dispute that HCBID produced responsive records in two productions on two different dates: (1) May 19, 2017 and (2) December 31, 2018. According to Riskin, on May 19, 2017 HCBID produced approximately 250 pages of printed emails and 3,161 emails (680 were duplicates), although many of the records were not responsive. Pet. Op. Br. at 2; Riskin Decl. ¶¶ 11-12, 19. Riskin took photographs of 41 pages of 23 distinct email hard copies when he was at HCBID's office in May 2017. Riskin Decl. ¶12. Of these 23 emails, none were included in Briggs' December 31, 2018 production of the records in electronic format. Riskin Decl. ¶19.

HCBID contends that it produced a box of "some 500 original, hand-redacted records" and subsequently produced all requested records in native electronic format, including the 500 records produced in printed form. Besten Decl. ¶¶ 16-17; Briggs Decl. ¶¶ 8-9. HCBID conducted a second search of the electronic

files transferred from Besten to Briggs and produced the responsive records in electronic form. The records produced include many duplicates because of multiple, overlapping keyword searches. Briggs Decl. ¶¶ 8-13.

There is a conflict in the evidence. HCBID contends that it produced all of the 500 redacted hard copies in electronic form, but Riskin contends that 23 redacted emails were not produced. Riskin specifically states that he photographed 41 pages amounting to 23 redacted emails in his review of the emails on May 19, 2017. Riskin Decl. ¶ 12. On January 3, 2019, Riskin's counsel informed Briggs that HCBID previously produced 11 of the 23 redacted emails in native electronic format on May 19, 2017, but it did not produce the remaining 13 emails in native electronic format on either production date. Riskin's counsel specifically identified the 11 outstanding emails, seemingly by file name. *See* Flynn Decl. Ex. 3 at pgs. 1-2.

Riskin's specific evidence is the more persuasive. HCBID does not explain whether it searched for the 11 outstanding emails in response to the January 3, 2019 communication from Riskin's counsel, and it does not provide an explanation why these documents were not produced in electronic format (*e.g.*, because they were deleted). Accordingly, Riskin has shown that HCBID did not produce all of the printed emails in native electronic format.

The question is whether HCBID failed to conduct an adequate search. Determining whether the search was "reasonably calculated to locate responsive documents" requires an examination of both the likelihood that the search would reasonably find responsive records and whether the agency made reasonable efforts in conducting that search. City of San Jose v. Superior Court, *supra*, 2 Cal.5th at 627.

There is no problem with HCBID's level of effort; Besten and Briggs exerted considerable effort to produce electronic records. The issue is only whether that search would reasonably find responsive records. When conducting HCBID's second search, Besten gathered the records by making multiple keyword searches, used Thunderbird to convert them to preserve their native format, and transferred the Thunderbird emails to Briggs, who searched the transferred records. Briggs Decl. ¶8.

Riskin presents evidence that Besten was not required to follow this procedure and that it unnecessarily created duplicates. *See* Riskin Reply Decl. ¶ 2. One can directly extract emails from Gmail in MBOX or EML, which are native format files. Riskin Reply Decl. ¶4. The extraction formats directly. Riskin Reply Decl. ¶4. After a search is complete, the entire set of responsive emails can be extracted from Gmail with no special software by following the steps in the instructions used by Gmail users at the City. Riskin Reply Decl. Ex. 10. Riskin has followed these steps to successfully extract emails from Gmail in native format. Riskin Supp. Dec. ¶ 4.

By itself, Riskin's evidence that there was a more elegant way to search does not support a conclusion that Besten's search was unreasonable. This leaves the fact that Briggs searched only the records Besten provided to him. Besten had technical problems transferring the emails to Briggs over a span of multiple weeks using "Thunderbird" software. Besten Decl. ¶¶ 16-17. Briggs had similar technical problems reviewing and producing Besten's emails. Briggs Decl. ¶¶ 11-12. Although Besten tested to ensure that she transferred all responsive records identified were successfully converted (Besten Decl. ¶16), that does not mean that all of the converted records were transferred. Besten admits that it took several attempts over a period of weeks to transfer the files to Briggs. Besten Decl. ¶17.

Based on this evidence, it would be speculation to conclude that HCBID's conversion and transfer dropped some emails, except that Riskin has shown that 11 hard copy emails were never provided in electronic form. Without some explanation for this failure, the adequacy of the search is suspect.

The court concludes that HCBID did not conduct an adequate search for responsive emails to the January 27, 2017 request. HCBID can remedy this defect simply by conducting a search of the emails remaining in Besten's email account (some have been deleted). A search of her account coupled with the previous search conducted by Briggs would ensure that no records are missing. The exportation and production of these records in native electronic format is not unreasonably difficult and does not require special software. *See* Riskin Reply Decl. Ex. 10 (exportation instructions). HCBID specifically should produce the 11 printed emails in native electronic format or else explain why they cannot be found.[7]

3. Mailchimp

Riskin contends that HCBID should search and produce all emails that were sent using Mailchimp that are responsive to his January 27, 2017 CPRA request, as well as the requests on February 22, 2017 (second and third requests) and June 26, 2017 (fourth request). Mailchimp is an email marketing service by which a user can send an email to persons on an address list. Besten Decl. ¶18. HCBID distributed newsletters to a recipient list using mailchimp. Ibid. This recipient list includes people with the "lacity" email address. Opp. at 19; Flynn Decl. Ex. 5, p. 81.

Riskin argues that HCBID sent emails to the City from its mailchimp account that are responsive to his requests, and yet it has taken the bizarre position the documents are not emails and HCBID has no access to them. Opp. at 5; Besten Decl. ¶18; Besten Depo., pp. 84-85; Flynn Decl., Ex. 5. Reply at 5. Riskin contends that HCBID's position is absurd and disingenuous. Individuals and entities use mailchimp because it can send an email to many contacts/recipients at once. Rogers Reply Decl. ¶2. Mailchimp provides its users access to the emails they send through the service as well as the user's recipient list. Rogers Reply Decl. ¶3. Riskin notes that Briggs emailed Flynn and suggested a *quid pro quo* in which Riskin could get HCBID to move on the mailchimp issue if Riskin would stop mocking Besten on the internet. Briggs Dec. ¶18. Riskin queries: "If Mr. Briggs actually believed that Ms. Besten could not access Respondent's MailChimp emails why would he have suggested the quid pro quo?" Reply at 5.

HCBID argues that it need not produce these emails because mailchimp is the "sender". Opp. at 13-14. HCBID uses mailchimp to send high volume announcements to an email address list. Besten Decl. ¶18. Mailchimp does not send emails from HCBID's account. Ibid. Rather, HCBID provides MailChimp with a recipient email address list and a newsletter which mailchimp sends automatically to the HCBID list. Ibid. Mailchimp uses a different HCBID domain name address than HCBID's address for its normal email communications, so while the recipient sees HCBID as the "sender," mailchimp is the actual sender. Ibid. HCBID's argument is disingenuous. Riskin's evidence shows that HCBID sent mailchimp emails with the following header "From: Historic Core BID <paola@historiccore.bid>." Flynn Decl. Ex. 8. Even if mailchimp sent the emails, HCBID drafted them and designated the recipients who had signed up for these newsletters on HCBID's website; mailchimp is simply the vehicle through which HCBID sent its mass emails.

HCBID also argues that it does not have the emails that were sent through mailchimp. HCBID receives no copy of the email sent by mailchimp, and it has no way to access to any such individual emails. Besten Decl. ¶18. All HCBID has is the email address list and a copy of the newsletters given to mailchimp for sending. Ibid. However, Riskin presents a declaration from a disinterested third party indicating how to obtain the copies of these emails. Rogers Decl. ¶¶ 3, 5. To retrieve a copy of an email that has already been sent through Mailchimp, the user should: (1) sign into mailchimp, (2) go to "Campaigns" (e-blasts) and select one that has been sent, (3) click the three vertical dots in the upper right corner (using Chrome browser), (4) select "print" and choose the printer and the email will be printed. Rogers Reply Decl. ¶5. Accordingly, HCBID must conduct a new search and produce Mailchimp emails responsive to all of Riskin's CPRA requests, with the exception of the first request. The reason the first request is excluded on the mailchimp issue is that Riskin limited this request to Besten's emails and there is no evidence that Besten, as opposed to HCBID, sent any mailchimp emails. Pet. Ex A ("Good morning, Blair. I'd like to take a look at all emails between you and anyone at . . . .").

4. Riskin's February 22, June 26, and October 26, 2017 Requests

Riskin argues that Besten is not competent to conduct a proper search and that Briggs only searched the files he received from Besten. Riskin relies on the facts that Besten performed multiple key word searches instead of an appropriate single search (Besten Decl. ¶16), she had trouble exporting email files in native format (Besten Decl. ¶16), some emails might not have transferred because of the computer problems Besten attributes to Thunderbird (Besten Decl. ¶16), Besten had trouble sending files to Briggs, including several unsuccessful attempts (Briggs Decl. ¶11), Briggs believed he needed to install Thunderbird software on his computer to review the files, his computer crashed, and he only eventually was able to access the emails and review them (Briggs Decl. ¶12), Briggs conducted multiple keyword searches to either produce a trickle of documents or a document dump where almost half the documents were

duplicates or non-responsive (Riskin Decl. ¶19), and Briggs "encountered problems in transferring the records electronically to Mr. Riskin". Briggs Decl. ¶15. Reply at 3-4. As a result, Riskin concludes that HCBID's production cannot be trusted to have supplied a complete set of potentially responsive records for any of the February 22, June 22, and October 26, 2017 requests. Pet. Op. Br. at 11-12.

Riskin's litany of HCBID's problems in the search and production, and his reference to HCBID's production of duplicative and non-responsive emails, does not show an unreasonable search. Unlike the January 17, 2017 request -- where 11 hard copy emails were not produced in electronic form -- Riskin fails to present any evidence that the searches for the February 22, June 26, and October 26, 2017 requests were incomplete. HCBID produced thousands of records for these four requests, including approximately 48 records to the second request, 68 records to the third request, 1,000 records to the fourth request, and 124 records to the fifth request. This production shows that Briggs competently located responsive records. While Riskin proposes a more elegant way to perform the search, he fails to provide any evidence that the search was incomplete and therefore unreasonable.[8]

F. Conclusion

The Petition is granted in part. A writ shall issue directing HCBID to conduct a new search for the January 27, 2017 request by searching the emails remaining in Besten's email account (some have been deleted) to ensure that no records are missing. HCBID should produce the 11 printed emails in native electronic format or else explain why they cannot be found. HCBID also must conduct a new search and produce mailchimp emails responsive to Riskin's CPRA requests other than the first request.

Riskin's counsel is ordered to prepare a proposed writ and judgment, serve it by email and regular mail on HCBID's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for December 17, 2019 at 1:30 p.m.

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[1] Riskin's 16-page opening brief exceeds the 15-page limit of CRC 3.1113(d). The court has exercised its discretion to read and consider only the first 15 pages.

[2] Riskin does not consistently number his paragraphs sequentially in his Petition. Thus, the court has included the Petition's corresponding section heading in the following citations.

[3]All further statutory references are to the Government Code unless expressly stated otherwise.

[4] Riskin produced little evidence. His verified Petition is not evidence in a mandamus case and his two declarations are non-compliant with CCP section 2015.5 in that they were executed in Virginia and not made under the penalty of California's perjury law. HCBID does not object to this failure and the court has considered Riskin's declarations.

[5] Although the parties use the name "MailChimp", "mailchimp" is the company's name. *See generally* https://mailchimp.com/.

[6] Riskin points out that he was entitled to ask for emails in their native format. Replly at 6. The CPRA expressly requires that when agencies receive a request for native format files they "shall make that information available in an electronic format." §6253.9(a). Riskin explains that he asks that be produced in their native format as they are much easier to review and search in native format. Riskin Reply Decl. ¶6. The court agrees that he was entitled to do so.

[7] Riskin contends that the court should order that another search be conducted or supervised by Meridian Discovery or a similar company. Flynn Dec. ¶2. Reply at 4. The court declines to do so.

[8] Riskin's Petition asks the court to order HCBID to produce all responsive documents to any future requests by Riskin within 30 days unless HCBID shows an extraordinary hardship. Pet. §Request for Relief, ¶4. However, the parties have stipulated the timing of future productions and the court issued an order pursuant to the stipulation on July 10, 2019. The parties agree that this issue is moot.